

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-212800**DATE:** October 25, 1983**MATTER OF:** Veterans Administration--Request for
Advance Decision**DIGEST:**

A late bid improperly returned to the bidder by the contracting officer is not prima facie unacceptable, and may now be opened and considered for award on the basis of proof that the lateness was due solely to mishandling by the agency during the process of receipt and that the sealed bid envelope had not been opened and resealed.

The Director, Office of Procurement and Supply, Veterans Administration (VA), requests an advance decision on a protest filed with the VA Medical Center, Kerrville, Texas, by Alamo Builders, Inc. regarding a bid submitted by the firm in response to invitation for bids (IFB) No. 591-47-83. Alamo's bid was received after the time set for bid opening and was returned to the firm unopened by the Center's contracting officer. Alamo contends that the bid was improperly returned and should now be considered for award. After careful investigation and analysis, we conclude that the lateness of the bid was due solely to government mishandling, that there is proof that the bid package has not been tampered with, and that the bid may now be opened and considered for award.

The bid opening took place at 1:00 p.m. on June 20, 1983. Alamo's bid was sent by certified mail and was received in the Center's mail room at 10:13 a.m. on June 21. The contracting officer determined that Alamo's bid was late and returned the bid package to the firm unopened. Shortly thereafter, in response to Alamo's request for an investigation, the contracting officer obtained evidence from the Kerrville Post Office that the bid had been picked up by the Center's driver at approximately 9:00 a.m. on June 20, some 4 hours prior to the time set for bid opening, and more than 25 hours before the bid was time/date stamped at the Center's mail room. The VA is of the opinion that because the Center's driver had possession of the bid prior to bid opening, the bid was not late and should have been opened

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and considered. However, the VA expresses concern that since the bid package was returned to Alamo and remained in the firm's possession for approximately 5 hours, the possibility exists that the bid was altered.

The record shows that Alamo returned the bid to the Center along with its June 22 letter of protest. Alamo also has submitted an affidavit stating that the bid package was neither opened nor tampered with during the 5 hours it was back in the firm's possession after having been returned by the Center. The VA is withholding award of any contract pending our resolution of the matter.

From the facts presented, we conclude that Alamo's bid was late. The Federal Procurement Regulations (FPR) at § 1-2.303-1 (1964 ed.) provide that bids received at the office designated in the invitation for bids after the exact time set for opening of bids are late bids, clearly the case here. The return of the bid to Alamo was improper, however, as FPR § 1-2.303-7 provides that a late bid shall be held unopened until after award and then returned to the bidder.

Evidence in the form of a postmark on the envelope discloses that the bid package arrived at the Kerrville Post Office on June 18, a Saturday, and that the Postal Service attempted delivery to the Center on that date. However, receipt was refused by the telephone operator on duty; we are informed that on weekends the Center only accepts first class mail sent to patients and staff and that certified/registered mail is not signed for but routinely rejected and returned to the Kerrville Post Office to await a Monday morning pick-up by the Center's driver. As we indicated earlier, the Center's driver obtained Alamo's bid package at approximately 9:00 a.m. on June 20, the following Monday, but for some inexplicable reason the package was not received in the Center's mail room until the next day.

FPR § 1-2.201(a)(31) provides that a late mailed bid may be considered for award in limited circumstances--if it was sent by registered or certified mail not later than the fifth calendar day prior to the date set for the receipt of bids, or it was sent by mail and it is determined by the government that the late receipt was due solely to mishandling by the government after receipt at the government installation. Since Alamo's bid was sent by certified mail 4 days prior to bid opening, the first exception does not permit consideration of the bid. In addition, there is no documentary evidence, other than the time/date stamp referred to above, to

establish an earlier time of receipt at the Center as required by the late bid clause. As a consequence, the bid cannot be considered under the provisions of that clause.

We do not believe, however, that this case is controlled by the late bid clause. Rather, we believe that what is most relevant here is the line of cases permitting the consideration of a late bid where it is shown that mishandling during the process of receipt (as distinguished from mishandling after receipt) was the paramount cause of the tardy receipt of the bid. See, e.g., Sun International, B-208146, January 24, 1983, 83-1 CPD 78; 42 Comp. Gen. 508 (1963); B-157176, August 30, 1965. For example, in B-157176, we held that a late bid could be considered for award where the Postal Service had attempted delivery of an airmail special delivery bid on the Sunday before a scheduled Monday opening, and guards at the installation had been instructed not to accept mail so that the Postal Service had to redeliver the bid the next day and failed to do so until after bid opening. We reached a similar result in Sun International, which involved the attempted delivery of an Express Mail bid package on a Saturday.

We believe that the present case is analogous. Here, it was the Center's policy to routinely reject certified/registered mail which the Kerrville Post Office attempted to deliver on weekends. Although the Center may have had a procedure to retrieve such mail by means of a pick-up at the Post Office on the following Monday, the driver's delay in this case clearly indicated that this procedure was potentially inadequate. In that regard, we have held that an agency must take reasonable steps to allow for the timely receipt of bids due for a Monday opening where the agency does not have an established policy for the acceptance of such material when delivered on weekends. Federal Contracting Corporation, 56 Comp. Gen. 737 (1977), 77-1 CPD 444. We see no reason why responsible Center employees on weekend duty could not have been authorized to receive certified/registered mail and then properly segregate it to insure delivery to the appropriate area in time for a Monday opening. Therefore, we can conclude that the Center's refusal to accept Alamo's bid package on Saturday, combined with the driver's delay in timely forwarding it to the mailroom on the following Monday, was the paramount cause of the lateness of the bid and represents a clear case of mishandling during the process of receipt. Federal Contracting Corporation, supra.

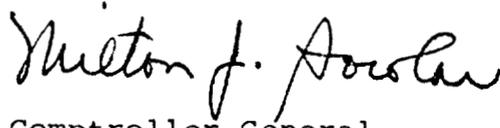
Given that the bid was excusably late, but improperly returned to the bidder by the contracting officer, we must next determine whether it may now be opened and considered for award. Our primary concern in such matters always has been with preserving the integrity of the competitive bidding system. Veterans Administration -- Request for Advance Decision, 62 Comp. Gen. 197 (1983), 83-1 CPD 141. In that sense, therefore, a bid that has been returned to the bidder after the opening of bids, with all the attendant possibilities for tampering and alteration, generally may not be considered for award. Dima Contracting Corporation, B-186487, August 31, 1976, 76-2 CPD 208.

However, in a limited situation, we have held that a bid resubmitted after opening, which has been improperly returned to the bidder unopened, was not prima facie unacceptable and could be considered for award on the basis of proof that the late bid should have been timely delivered, and that the sealed bid envelope had not been opened. 50 Comp. Gen. 325 (1970). In this case, we submitted Alamo's bid envelope to the Postal Service Crime Laboratory for an examination to determine whether the envelope had been opened and resealed. The Crime Laboratory report states:

"An examination of the submitted questioned envelope did not reveal any evidence that the envelope had been opened and resealed."

In view of this report, we are satisfied that the envelope contains the same bid as originally submitted by Alamo.

Accordingly, under the circumstances of this case, the bid package may now be opened by the contracting officer and considered for award.

for 
Comptroller General
of the United States